



Department
for Education

Teachers' Pension Scheme Pension Board

Reporting Breaches Policy

February 2019

Pension Board Reporting Breaches Policy

1. A breach is when an organisation fails to abide by the provisions of a particular principle, rule or rules contained in legislation with which the company must comply. Consequently, the nature of breaches can be extremely wide and of varying significance.

Legal Requirements

2. Certain people are required to report breaches of the law to the regulator where they have reasonable cause to believe that:
 - A legal duty which is relevant to the administration of the scheme has not been, or is not being, complied with
 - The failure to comply is likely to be of material significance to the regulator in the exercise of any of its functions.
3. Those people who are subject to this reporting requirement for public service pension schemes include :
 - The scheme manager
 - Members of the Pension Board
 - Any person who is otherwise involved in the administration of the scheme
 - Employers
 - Professional advisers
 - Any person who is otherwise involved in advising the managers of the scheme in relation to the scheme

Reporting Breaches in the Teachers' Pension Scheme

4. Identifying and assessing a breach of the law is important in reducing risk and providing an early warning of possible malpractice.
5. Those with a responsibility to report breaches should ensure appropriate procedures are established to ensure that legal obligations can be met effectively. Procedures should enable people to raise concerns and facilitate the objective consideration of those matters.
6. Where a TPSPB member identifies a breach, or possible breach within the TPS, they should raise this for discussion with the Chair and other Board members. If a Board meeting is scheduled in the near future it should be raised as an agenda item via the Chair.
7. Where the next scheduled Board meeting is more than 2 weeks distant the individual should contact the Chair to discuss the issue. The Chair will liaise with the department, via the Secretariat, to decide whether an extraordinary meeting should be called or to agree what activity should be carried out. The breach

should then be discussed at the next Board meeting to apprise fellow Board members and agree next steps.

8. Where the breach involves fellow Board members or the Secretariat, the individual should alert the Chair who will agree next steps with the scheme manager.
9. Where the breach involves the Chair, individuals should contact department officials via the Secretariat.
10. Where Board members encounter breaches within their normal working environment (i.e. not as a result of their Board membership) they should only alert the Board where there is a potential conflict of interest.
11. Capita Teachers' Pensions have developed and operate a procedure, with supporting briefing material, to meet their legal requirement :
 - Capita Employee Benefits (CEB) Breach Reporting Procedure
This describes what constitutes a breach (including specifically DPA and tPR breaches) and the reporting process.
 - Capita Technical Briefing – Disclosure of Information
 - Capita Technical Briefing – Notifiable events
 - Capita Technical Briefing–Whistleblowing - Reporting Breaches of the Law (this relates specifically to tPR requirements and is attached as annex A)
12. The department also operates a Policy for “Whistleblowing and Raising a Concern”, which is underpinned by the Civil Service Code.

Assurance

13. The department has established a control environment to provide assurance mechanisms and oversee the governance of the scheme. .

Judging whether a breach should be reported

14. Breaches can occur in relation to a wide variety of the tasks normally associated with the administrative function of a scheme such as keeping records, internal controls and calculating benefits.
15. There must be “reasonable cause” to believe that a breach has occurred – this means more than merely having a suspicion that cannot be substantiated. Reporters should ensure that where a breach is suspected, they carry out checks to establish whether or not a breach has in fact occurred. Where the reporter does not know the facts or events around the suspected breach it will usually be appropriate to check with the scheme manager or with others who are in a position to confirm what has happened, this will include checking the relevant legal provision if they are unclear.

16. In establishing whether there is reasonable cause to believe that a breach has occurred, it is not necessary for a reporter to gather all the evidence which the regulator may require. A delay in reporting may increase the risk of the breach.
17. The regulator should be contacted without delay where the reporter has become aware of either theft, suspected fraud or another serious offence **and** where there is concern that by making further checks there is a risk of either :
- Alerting those involved
 - Hampering the actions of the police or a regulatory authority

Material Significance

18. The breach is likely to be of material significance to the regulator where it was caused by:
- Dishonesty
 - Poor governance or administration
 - Slow or inappropriate decision making practices
 - Incomplete or inaccurate advice
 - Acting (or failing to act) in deliberate contravention of the law
19. Reporters should decide whether the breach is likely to be of material significance to the regulator by considering the cause, the effect the reaction and the wider implications of the breach.
20. A breach will not normally be materially significant if it has arisen from an isolated incident.
21. The Pension Regulator has designed a traffic light framework to help decide whether a breach is likely to be of material significance and should be reported:
- Red** – where the cause, effect, reaction and wider implications when considered together are **likely** to be of material significance
- Amber** – where the cause effect, reaction and wider implications of a breach when considered together **may** be of material significance
- Green** – where the cause, effect, reaction and wider implication of a breach when considered together are **not likely** to be of material significance
22. When deciding whether to report, consideration should be given to these points and reporters should seek expert or professional advice, where appropriate, when deciding whether the breach is likely to be of material significance to the regulator.

Process for submitting a Report to the Regulator

23. A report of a breach must be made in writing as soon as reasonably practicable.
24. Reports should be in writing, either by post or electronically, and wherever possible reporters should use the standard format available on the Exchange On-line service on the regulator's website.

25. The report should be dated and include:

- Details of the scheme/scheme manager such as full name and address
- Details of the employer if relevant
- Description of the breach(es) with any relevant dates and whether the concern has been reported before
- The reason the breach is thought to be of material significance to the regulator
- Name, position and contact details of the reporter, and their role in relation to the scheme

26. Reporters may precede a written report with a telephone call, if appropriate.

27. The regulator will acknowledge all reports within five working days of receipt, however it will not normally keep a reporter informed regarding progress or steps taken as there are restrictions on the information it can disclose.

28. Breaches should be reported as soon as practicably possible; the time taken should reflect the seriousness of the suspected breach.

29. Where there is an immediate risk to the scheme, the regulator only requires reporters to make such immediate checks as are necessary. The more serious the potential breach and its consequences, the more urgently reports should make these checks.

30. Board members who wish to report a breach should liaise with the secretariat and, if possible, the Chair, who will provide support and assistance.

Protection

31. The Pension Act 2004 makes clear that the statutory duty to report overrides any other duties a reporter may have such as confidentiality and that any such duty is not breached by making a report. The statutory duty does not however override “legal privilege” which means that oral and written communications between a professional legal adviser and their client does not have to be disclosed.

32. The regulator will take all reasonable steps to maintain confidentiality and protect the identity of the reporter, and will not disclose the information except where lawfully required to do so.

33. The Employment Rights Act 1996 provides protection for employees making a whistleblowing disclosure to the regulator.

Scenarios

34. To assist Board members in determining when they are likely to encounter identifying and reporting breaches as a member of the TPSPB, the scenarios in Annex A are taken from the Pensions Regulator’s website and provided for illustration.

Annex A: Extract from the Pensions Regulator's Public Service toolkit.

Certain people involved with the governance and administration of a public service pension scheme must report certain breaches of the law to The Pensions Regulator. These people include scheme managers, members of pension boards, employers, professional advisers and anyone involved in administration of the scheme or advising managers. You should use the traffic light framework when you decide whether to report to us. This is defined as follows:

- **Red** breaches must be reported.
- **Amber** breaches are less clear cut: you should use your judgement to decide whether it needs to be reported.
- **Green** breaches do not need to be reported.

All breaches should be recorded by the scheme even if the decision is not to report.

When using the traffic light framework you should consider the content of the red, amber and green sections for each of the cause, effect, reaction and wider implications of the breach, before you consider the four together.

As each breach of law will have a unique set of circumstances, there may be elements which apply from one or more of the red, amber and green sections. You should use your judgement to determine which overall reporting traffic light the breach falls into. By carrying out this thought process, you can obtain a greater understanding of whether or not a breach of the law is likely to be of material significance and needs to be reported.

You should not take these examples as a substitute for using your own judgement based on the principles set out in the code of practice as supported by relevant pension's legislation. They are not exhaustive and are illustrative.

Knowledge and understanding required by pension board members

Example scenario: The scheme manager has breached a legal requirement because pension board members failed to help secure compliance with scheme rules and pensions law.

Potential investigation outcomes				
	Cause	Effect	Reaction	Wider implications
RED	Pension board members have failed to take steps to acquire and retain the appropriate degree of knowledge and understanding about the scheme's administration policies.	A pension board member does not have knowledge and understanding of the scheme's administration policy about conflicts of interest. The pension board member fails to disclose a potential conflict, which results in the member acting improperly.	Pension board members do not accept responsibility for their failure to have the appropriate knowledge and understanding or demonstrate negative or noncompliant entrenched behaviours. The scheme manager does not take appropriate action to address the failing in relation to conflicts.	It is highly likely that the scheme will be in breach of other legal requirements. The pension board do not have an appropriate level of knowledge and understanding and in turn are in breach of their legal requirement. Therefore, they are not fulfilling their role to assist the scheme manager and the scheme is not being properly governed.
AMBER	Amber Pension board members have gaps in their knowledge and understanding about some areas of the scheme's administration policies and have not assisted the scheme manager in securing compliance with internal dispute resolution requirements.	Some members who have raised issues have not had their complaints treated in accordance with the scheme's internal dispute resolution procedure (IDRP) and the law.	The scheme manager has failed to adhere precisely to the detail of the legislation where the breach is unlikely to result in an error or misunderstanding or affect member benefits.	It is possible that the scheme will be in breach of other legal requirements. It is possible that the pension board will not be properly fulfilling their role in assisting the scheme manager.
GREEN	Green Pension board members have isolated gaps in their knowledge and understanding.	The scheme manager has failed to adhere precisely to the detail of the legislation where the breach is unlikely to result in an error or misunderstanding or affect member benefits.	Pension board members take action to review and improve their knowledge and understanding to enable them to properly exercise their functions and they are making quick progress to address gaps in their knowledge and understanding. They assist the scheme manager to take prompt and effective action to remedy the breach.	It is unlikely that the scheme will be in breach of other legal requirements. It is unlikely that the pension board is not fulfilling their role in assisting the scheme manager.

Scheme Record Keeping

Example scenario: an evaluation of member data has identified incomplete and inaccurate records.

Potential investigation outcomes				
	Cause	Effect	Reaction	Wider implications
RED	Inadequate internal processes that fail to help employers provide timely and accurate data, indicating a systemic problem.	All members affected (benefits incorrect/not paid in accordance with the scheme rules, incorrect transactions processed and poor quality information provided in benefit statements).	Action has not been taken to identify and tackle the cause of the breach to minimise the risk of recurrence nor to notify members.	It is highly likely that there are wider scheme issues caused by inadequate processes and that the scheme will be in breach of other legal requirements.
AMBER	A failure by some – but not all participating employers to act in accordance with scheme procedures, indicating variable standards of implementing those procedures.	A small number of members affected	Action has been taken to identify the cause of the breach, but progress to tackle it is slow and there is a risk of recurrence.	It is possible that there are wider scheme issues and that the scheme may be in breach of other legal requirements.
GREEN	A failure by one participating employer to act in accordance with scheme procedures, indicating an isolated incident.	No members affected at present.	Action has been taken to identify and tackle the cause of the breach and minimise the risk of recurrence.	It is unlikely that there are wider scheme issues or that the scheme manager will be in breach of other legal requirements.

Providing Information to members

Example Scenario: An active member of a defined benefit (DB) public service scheme has reported that their annual benefit statement, which was required to be issued within 17 months of the scheme regulations coming into force, has not been issued. It is now two months overdue. As a consequence, the member has been unable to check:

- Personal data is complete and accurate
- Correct contributions have been credited
- What their pension may be at retirement

Potential investigation outcomes				
	Cause	Effect	Reaction	Wider implications
RED	Inadequate internal processes for issuing annual benefit statements, indicating a systemic problem.	All members may have been affected.	Action has not been taken to correct the breach and/ or identify and tackle its cause to minimise the risk of recurrence and identify other members who may have been affected.	It is highly likely that the scheme will be in breach of other legal requirements.
AMBER	An administrative oversight, indicating variable implementation of internal processes	A small number of members may have been affected.	Action has been taken to correct the breach, but not to identify its cause and identify other members who may have been affected.	It is possible that the scheme will be in breach of other legal requirements.
GREEN	An isolated incident caused by a one off system error.	Only one member appears to have been affected.	Action has been taken to correct the breach, identify and tackle its cause to minimise the risk of recurrence and contact the affected member.	It is unlikely that the scheme will be in breach of other legal requirements.

Internal controls

Example scenario: A DB public service scheme has outsourced all aspects of scheme administration to a third party, including receiving contributions from employers and making payments to the scheme. Some contributions due to the scheme on behalf of employers and members are outstanding.

Potential investigation outcomes				
	Cause	Effect	Reaction	Wider implications
RED	The administrator is failing to monitor that contributions are paid to them in time for them to make the payment to the scheme in accordance within the legislative timeframes and is therefore not taking action.	The scheme is not receiving the employer contributions on or before the due date nor employee contributions within the prescribed period.	The administrator has not taken steps to establish and operate adequate and effective internal controls and the scheme manager does not accept responsibility for ensuring that the failure is addressed.	It is highly likely that the administrator is not following agreed service level standards and scheme procedures in other areas. The scheme manager is likely to be in breach of other legal requirements such as the requirement to have adequate internal controls.
AMBER	The administrator has established internal controls to identify late payments of contributions but these are not being operated effectively by all staff at the administrator	The scheme is receiving some but not all of the employer contributions on or before the due date and employee contributions within the prescribed period.	The scheme manager has accepted responsibility for ensuring that the failure is addressed, but the progress of the administrator in training their staff is slow.	It is possible that the administrator is not following some of the agreed service level standards and scheme procedures in other areas. It is possible that the scheme manager is in breach of other legal requirements.
GREEN	Legitimate late payments have been agreed by the scheme with a particular employer due to exceptional circumstances.	The employer is paying the administrator the outstanding payments within the agreed timescale.	The scheme has discussed the issue with the employer and is satisfied that the employer is taking appropriate action to ensure future payments are paid on time.	It is unlikely that the employer is failing to adhere to other scheme processes which would cause the scheme manager to be in breach of legal requirements.

NB: the Regulator's e-learning package, accessible via the public sector toolkit, contains an example case study to work through.

